

On November 4, 2013, Mitchell filed, *inter alia*, a motion to extend time to file his “first Original Petition.” (Doc. 8.)¹ To support his motion to extend time, Mitchell explains that he is proceeding *pro se*, he “has very limited resources,” and he “needs records and time to prepare for a federal level habeas corpus to learn about the ‘AEDPA.’” Further, Mitchell notes that “only about 60 days of the one year time to file Federal Habeas Corpus has elapsed” since the Texas Court of Criminal Appeals denied his state habeas petition. (*See* Doc. 8, p. 7.) Thus, Mitchell has approximately ten months to properly file a petition for writ of habeas corpus, before he is time-barred from filing such a petition.

Mitchell is apparently confused as to the necessity of a petition being filed, in order to initiate a habeas proceeding, prior to the filing and disposition of any motions. Based on his misunderstanding of the procedural requirements, coupled with his desire for additional time to learn about the AEDPA and prepare a federal-level habeas action, it is the opinion of the magistrate judge that dismissal of the action, without prejudice, is preferable to allowing the case to stand in its present posture, without a petition, for the requested ninety days.

For the foregoing reasons, this court **RECOMMENDS** that all pending motions be **DENIED** and this case be **DISMISSED** without prejudice to properly file a petition for writ of habeas corpus in the future.

IT IS THEREFORE ORDERED that this case is **TRANSFERRED** back to the docket of the United States district judge.

A copy of this report and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of this report and recommendation must file

¹ Mitchell continues to assert that an original petition has not been filed, and he contends that his application to proceed *in forma pauperis*, motion for free copies of records, and motion for an investigator should all be heard prior to filing his petition.

specific written objections within 14 days after being served with a copy. In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's report and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error.

SO ORDERED.

DATED this 5th day of November, 2013.



E. SCOTT FROST
UNITED STATES MAGISTRATE JUDGE